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REMARKS

Claim 1 has been amended to more distinctly and explicitly define the invention and also to more clearly distinguish over the applied Yamamoto reference.

REJECTION UNDER 35 U.S.C. § 102(b)

The examiner is respectfully requested to reconsider the rejection of claims 1 to 10 under 35 USC 102(b) as being anticipated by US Pat. 4,357,377 to Yamamoto. Amended claim 1, the broadest claim in the application, relates to a waterproofing membrane 10 that has: 1) a waterproofing material layer 12 with opposite first and second sides; 2) the first side coated with an impervious surfacing material 14 which directly adheres to the waterproofing material layer; and 3) the second side coated with an adherent support sheet 16 allowing passage of the waterproofing material to enter in contact with a surface on which said membrane is to be applied.

Yamamoto does not disclose or even suggest that the first side of the waterproofing material layer 11 is coated with an impervious surfacing material that directly adheres to the waterproofing material. Since Yamamoto does not disclose this feature of an

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impervious layer directly against the first side of the waterproofing material layer, Yamamoto cannot be said to anticipate the claim.

Yamamoto does disclose two layers 12 and 13 directly against either side of the waterproof material layer 11. However, as the examiner herself states in the Action, the layers 12 and 13 are both permeable to the waterproofing material layer and thus neither layer is impermeable. Yamamoto states on col. 5, line 13, 14 that fibrous sheets impregnated with bitumen can be used. Thus both sheets are permeable. Yamamoto also states in col. 5, lines 15 to 22 that with some sheet material, the sheets do not need impregnation with bitumen since the bitumen layer to which they are adhered permeates the fibrous sheets. Thus Yamamoto clearly discloses that both sheets 12 and 13, directly adjacent the sides of the waterproofing layer, are permeable to bitumen and that neither one is impermeable. Applicant's claim 1 however clearly specifies one of the sheets to be impervious or impermeable and this sheet directly adheres to the waterproofing layer.

To reject the claims, the examiner equates the insulating layer 14 of Yamamoto as equivalent to applicant's impervious surfacing material. (see lines 8 to 10 of para. 3 of the last Office Action). The examiner conveniently ignores the fact that this insulating layer, while it may be impervious, is not directly against one side of the waterproofing layer 11, as called for in applicant's claim 1, but is instead against one of the permeable sheets 13. Thus again, claim 1 is not believed to be anticipated by Yamamoto since the impervious

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layer (the insulating layer 14) in Yamamoto is not directly on the one side of the waterproofing layer.

One aspect of applicant's invention is to provide a waterproofing membrane that does not, due to the one impervious layer, need a release layer. Applicant's membrane can be supplied in a rolled condition and, due to the impermeable layer, can be easily unrolled and applied, via the permeable layer, which is soaked through with bitumen, directly on the surface it is to be applied. The Yamamoto membrane on the other hand, because of its construction needs a release sheet on the membrane, particularly on the side having the pervious layer 12. While the simplified embodiment shown in Fig. 1 shows no release layer, one would be needed if this embodiment were to be used, as is, since the layers could not be transported or handled, rolled or stacked, without having a release layer. Embodiments with the additional bitumen coated layer 16 are specifically used with a release layer. (see col. 6, lines 26 to 34 and lines 40 to 43 of the patent).

Applicant's membrane is obviously much simpler in construction, having only three layers, and thus cheaper than the Yamamoto membrane which at its simplest, as shown in Fig. 1, has three layers plus requiring a release layer. Applicant's membrane is also more easily handled than the Yamamoto membrane since a release layer does not have to be removed before application.

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In view of the above differences between applicant's membrane, as set out in amended claim 1, and the Yamamoto membrane, it is respectfully submitted that the rejection under 35 USC 102 (b) of anticipation be withdrawn. Since the remaining claims are dependent on claim 1, is believed that the rejection of these claims for anticipation should also be withdrawn.

Respectfully,

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